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STATE CAPITOL  
PHOENIX, ARIZONA

June 3, 1971

DEPARTMENT OF LAW OPINION NO. 71-20 (R-55)

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REQUESTED BY: J. FRED TALLEY  
Commissioner  
Arizona State Real Estate Department

- QUESTIONS:
1. Does the mandatory formation of a planning and zoning commission under § 11-802 of Chapter 129 of the Laws of 1971 conflict with the local option zoning provisions of A.R.S. § 11-825, et seq.?
  2. Considering that § 11-802 makes county planning and zoning commissions mandatory, does the language of § 11-806.01.A, specifically "where a county planning and zoning commission, etc.", conflict with the mandatory nature of § 11-802?
  3. Does the permissive nature of the language of § 11-806.01.D, that regulations may be adopted, render meaningless the mandatorily required provisions which must be included in such regulations, if adopted?
  4. Does the last sentence of § 11-806.01.D require a statement on the recorded plat of what provisions for utilities installation have been accepted by the Board, "when such installations are to be accomplished, and what guarantee has been accepted to insure installation?"

- ANSWERS:
1. No.
  2. No.
  3. No.
  4. No.

(For convenience in reference, the statutes under consideration here are attached as an Appendix.)

The language of § 11-802 is clearly mandatory; county boards shall form county planning and zoning commissions in every instance. However, we note that in carrying out its duties, each board of supervisors is bound to act "in the manner provided in this chapter. . . ." A.R.S. §§ 11-825, et seq., are part of Chapter 6 of Title 11, and the Legislature clearly did not intend to repeal those last mentioned provisions. The provisions for a referendum petition for local option zoning is a familiar feature of Arizona law whereby citizens can directly change laws which are extremely unpopular or repugnant. A reasonable interpretation of Chapter 6 as it has now been amended would seem to be that, while the county board of supervisors must set up a county planning and zoning commission under A.R.S. § 11-802, the electors still ultimately have the final say in zoning matters if they choose to act under §§ 11-825, et seq. It is a general provision of statutory construction that courts examine the whole of the statute and the guides therein to interpret its meaning fairly and sensibly. State ex rel. Morrison v. Jay Six Cattle Company, 85 Ariz. 220, 335 P.2d 799 (1959).

First, we note that there is no internal conflict in the language of A.R.S. § 11-806.01.A, specifically the first and last sentences. Clearly, the planning and zoning commission's opinion is to be sought and its recommendations forwarded to the board. But the board is given discretion in making its ultimate decision as to what weight to attach to the commission's recommendation.

Furthermore, the fact that the last sentence of paragraph A is loosely worded so as to suggest that the county planning and zoning commissions may not exist in every county is not sufficient to weaken the mandatory nature of A.R.S. § 11-802. Statutes relating to the same subject matter should be read together and harmonized where possible. Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969).

The plain and apparent meaning of the language of A.R.S. § 11-806.01.D is that the board of supervisors may or may not adopt the rules and regulations mentioned, but if such regulations are adopted, they must include the protections outlined. The permissive direction of the legislation as to whether or not such regulations must be adopted does not render meaningless the rest of the paragraph. The presumption exists that legislatures do not include in statutes provisions which are redundant, void, inert or trivial. State v. Edwards, 103 Ariz. 487, 446 P.2d 1 (1968).

Since the regulations mentioned in the last sentence of A.R.S. § 11-806.01.D either may or may not be adopted at the discretion of the Board of Supervisors, such regulations can hardly be in effect until adopted. The last sentence in paragraph D, while clumsily worded, is susceptible to only one meaning: the regulations, if adopted, shall provide direction as to the extent to which improvements must have already been accomplished, or have been assured, fulfillment of such conditions to be a condition precedent to approval of the final plat.

This language from an earlier version of the bill is helpful in divining the intent of the Legislature:

"The regulations shall include provisions as to the extent to which streets and other highways shall be graded and improved and to which water, sewer, or other utility mains, piping or other facilities shall be installed or assured as a condition precedent to the approval of the plat." (Emphasis added.)

Note that there is no immediate practical effect to that last sentence of paragraph D unless and until the board adopts the general rules and regulations. Where there is ambiguity in a statute, it is proper to consider its legislative history. City of Tucson v. Superior Court of Pima County, 2 Ariz.App. 25, 406 P.2d 227 (1965).

APPENDIX

"11-802. County planning and zoning

"The board of supervisors of a county, in order to conserve and promote the public health, safety, CONVENIENCE and general welfare, and in accordance with the provisions of this chapter, may SHALL plan and provide for the future growth and improvement of the ITS area under its OF jurisdiction, and coordinate all public improvements in accordance therewith, form a planning and zoning commission to consult with and advise it regarding matters of planning, and zoning, AND SUBDIVISION PLATTING and in the manner provided in this chapter, adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of the ITS area under its OF jurisdiction."

"11-806.01. Subdivision platting rules; penalty

"A. NO PLAT OF A SUBDIVISION OF LAND WITHIN THE AREA OF JURISDICTION OF SUCH COUNTY SHALL BE ACCEPTED FOR RECORDING OR RECORDED UNTIL IT HAS BEEN APPROVED BY THE BOARD. THE APPROVAL OF THE BOARD SHALL BE ENDORSED IN WRITING ON THE PLAT. WHERE A COUNTY PLANNING AND ZONING COMMISSION EXISTS, THE PLAT SHALL FIRST HAVE BEEN REFERRED TO SUCH COMMISSION FOR ITS CONSIDERATION AND THE BOARD SHALL HAVE RECEIVED THE RECOMMENDATION OF THE COMMISSION.

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"D. THE COMMISSION MAY RECOMMEND TO THE BOARD AND THE BOARD MAY ADOPT GENERAL RULES AND REGULATIONS OF UNIFORM APPLICATION GOVERNING PLATS AND SUBDIVISIONS OF LAND WITHIN ITS

AREA OF JURISDICTION. THE REGULATIONS ADOPTED SHALL SECURE AND PROVIDE FOR THE PROPER ARRANGEMENT OF STREETS OR OTHER HIGHWAYS IN RELATION TO EXISTING OR PLANNED STREETS OR HIGHWAYS OR TO THE OFFICIAL MAP FOR ADEQUATE AND CONVENIENT OPEN SPACES FOR TRAFFIC, UTILITIES, DRAINAGE, ACCESS OF FIRE FIGHTING APPARATUS, RECREATION, LIGHT AND AIR. THE GENERAL RULES AND REGULATIONS MAY PROVIDE FOR THE MODIFICATION THEREOF BY THE COMMISSION IN PLANNED AREA DEVELOPMENT OR SPECIFIC CASES WHERE UNUSUAL TOPOGRAPHICAL OR OTHER EXCEPTIONAL CONDITIONS MAY REQUIRE SUCH ACTION. THE REGULATIONS SHALL INCLUDE PROVISIONS AS TO THE EXTENT TO WHICH STREETS AND OTHER HIGHWAYS SHALL BE GRADED AND IMPROVED AND TO WHICH WATER, SEWER, OR OTHER UTILITY MAINS, PIPING OR OTHER FACILITIES SHALL BE INSTALLED OR PROVIDED FOR ON THE PLAT AS A CONDITION PRECEDENT TO THE APPROVAL OF THE FINAL PLAT."

"§ 11-825. Alternate method for initiating zoning; referendum petition for local option; election; entry of election result

"A. Upon formal adoption of a zoning ordinance by the board as a part of the county plan, and within ninety days thereafter, ten per cent of the qualified electors of the county may, by a referendum petition as provided by law, request an election within the county to determine whether zoning should be initiated by local option within the county, or any part thereof, by zoning areas. If the referendum petition is filed according to law, and found by the board to be sufficient, the board shall order an election on the question within ninety days thereafter, but it shall not be necessary for

the board to issue publicity pamphlets on the question, and notice of the election shall be given by the board in the same manner provided by law for publicizing a primary election in the county as more fully set forth in § 16-501.

"B. The election shall be held and conducted, ballots therefor prepared, boards of election appointed, and the votes canvassed and returned as provided by law for general elections, except as otherwise provided by this chapter. Persons entitled to vote at the election shall be record owners of real property located outside the corporate limits of an incorporated city or town, but within the county, and who are also qualified electors of the county. The persons shall be required by election officials to sign affidavits as to their qualifications before being permitted to vote in such an election.

"C. If no referendum petition is filed within the ninety-day period, the zoning ordinance as previously adopted shall become effective, and it shall not again be subject to a referendum as to the method of initiation.

"D. If it appears that a majority of the votes cast in an election provided for in this section favors the initiation of zoning by local option within the county, the board, after canvassing returns at its next regular meeting, shall cause an entry of that fact to be made upon its minutes. If the proposition submitted fails to receive a majority of the votes cast, a like order shall be made, and the ordinance, as previously adopted, shall become immediately effective."

"§ 11-826. Local option; establishment of  
zoning areas; election

"A. If, after an election as provided for in § 11-825, the board determines that zoning shall be initiated within its jurisdiction by local option, five or more real property taxpayers of the county residing within a proposed zoning area may file a petition with the clerk of the board which shall define the boundaries of the proposed area, and shall pray that the board call an election within the boundaries to decide whether or not zoning shall be initiated within the area. The petition shall contain a certificate by the taxpayers stating that on their information and belief the petition contains the signatures of not less than twenty-five per cent of the owners of real property, by area and number, within the proposed area.

"B. The board shall determine the sufficiency thereof and, if found sufficient, shall order the commission to prepare a zoning map for the area and shall set forth a time not less than sixty nor more than ninety days from the date of the order at which time the commission shall submit the proposed map to the board. The commission may, however, petition the board for an extension of the time limit giving its reasons for the request, and the board may extend the time limit as it sees fit.

"C. The commission shall thereupon make such studies and investigations of the area as it deems necessary and shall prepare a proposed zoning map setting forth the exact boundaries of districts within which the zoning regulations shall be applicable. The commission shall hold at least one public hearing thereon, at least fifteen days notice of which shall be given by

one publication in a newspaper of general circulation and by posting in the zoning area. After having held the hearing the commission shall by resolution adopt the proposed zoning map and transmit it to the board.

"D. Upon receipt of the proposed zoning map the board shall order that an election be held within the proposed zoning area not less than sixty nor more than ninety days after receipt thereof. The order of the board calling the election shall be posted in three public places within the district for not less than thirty days prior to the date of the election, and by one publication in a newspaper of general circulation in the county seat three weeks prior to such election. The order shall contain the text of the zoning regulations and the proposed map, the names of three suitable persons as judges to conduct the election, and the hours during the day, not less than ten, when the polls will be open. The ballot shall contain a description of the zoning area and make reference to the zoning regulations and map. The question to be voted on shall be substantially: 'Shall the zoning ordinance be adopted for this area? Yes. No.' The manner of conducting the voting at such election, and contesting it, of keeping the poll lists, canvassing the votes and certifying the returns, shall be the same, as nearly as possible, as in the election of county officers.

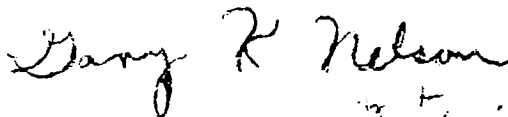
"E. Persons shall be entitled to vote at the election who, at the time of the election, are record owners of real property within the boundaries of the area and have been such owners continuously for a period of six months immediately prior to the election, and are twenty-one years of age or over.



"F. The board when ordering the election, shall by resolution provide and require a registration of all persons entitled to vote at such election. The registration shall begin at least thirty days before, and close ten days prior to the date of the election, and shall be made by, or under direction of the clerk of the board who shall, not less than five days prior to the date of the election, file with the board and deliver to each of the judges named in the order for the election, a certified list of the persons qualified to vote.

"G. At the next regular meeting of the board after the election the board shall canvass the returns, and if it appears that a majority of the votes cast at the election are in favor of the proposition submitted, then the board shall cause an entry of that fact to be made upon its minutes. If the proposition submitted fails to receive a majority of the votes cast, a like order shall be made. Elections within a proposed area or part of an area shall not be held more than once in any two year period."

Respectfully submitted,



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The Attorney General